

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*[Untimely Protest of Army Contract Award]*

FILE: B-199600

DATE: August 25, 1980

MATTER OF: American Sterilizer Company

**DIGEST:**

Protest sent to GAO by registered mail less than 5 days prior to deadline for receipt and received after deadline is untimely under Bid Protest Procedures and will not be considered on merits.

American Sterilizer Company (AMSCO) protests the award of a contract by the Department of the Army (Army) to Castle Company, Division of Sybron Corporation, for hospital sterilizer equipment. AMSCO claims that the same equipment could have been purchased from its firm for about \$20,000 less by means of Veterans Administration decentralized supply contracts which were available for Army use on a nonmandatory basis. AMSCO requests that the existing award be canceled and an award made to its firm.

The Army reports that AMSCO initially protested the award to the contracting officer at Fort Hood, Texas, by letter of June 13, 1980. By letter of June 25, 1980, the contracting officer denied the protest. The record indicates that a meeting was held on June 26, 1980, at Fort Hood with AMSCO representatives and the contracting officer and other interested parties. At this meeting, there was a discussion of the protest and AMSCO was advised of the contracting agency's denial of the June 13 protest.

Our Bid Protest Procedures (Procedures) at 4 C.F.R. § 20.2(a) (1980) state:

"\* \* \* If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 [working]

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days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered \* \* \*

AMSCO's time for filing a protest with our Office began on June 26, 1980, when it was advised at the meeting with the contracting agency that its protest was denied (initial adverse agency action). Therefore, the deadline for filing the protest was July 11, 1980. Since AMSCO's protest was not filed (i.e., received) by our Office until July 15, 1980, the protest is untimely. See JRT & T Associates, B-197061, December 31, 1979, 80-1 CPD 4.

Under section 20.2(b)(3) of our Procedures, an untimely protest will be considered if it was sent by registered or certified mail not later than 5 days prior to the final date for filing the protest.

AMSCO's protest was sent by registered mail on July 10, 1980, less than 5 days prior to the deadline for receipt in our Office. Since the protest was not sent within the time limit provided for mailing a protest by registered mail, the protest is not for consideration under the registered mail exception. Therm-Air Mfg. Co., Inc., B-194886, June 12, 1979, 79-1 CPD 414.

Therefore, the protest is dismissed and will not be considered on the merits.

*Harry R. Van Cleave*  
for Milton J. Socolar  
General Counsel